

AMENDED IN SENATE MARCH 24, 2008

**SENATE BILL**

**No. 1242**

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**Introduced by Senators Runner and Harman**

February 14, 2008

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~~An act to amend Section 1748.5 of the Civil Code, relating to credit cards.~~ *An act to add Section 10177.7 to the Business and Professions Code, to amend Section 1695.17 of, and to add Sections 1922 and 2949.5 to, the Civil Code, and to amend Section 17144 of, and to add and repeal Sections 17053.9 and 23606 of, the Revenue and Taxation Code, relating to residential mortgages, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1242, as amended, Runner. ~~Credit cards.~~ *Residential mortgages.*

*(1) Existing law, the Real Estate Law, requires listing and selling agents, as defined, to provide sellers and buyers in a residential real property transaction with a disclosure form, as prescribed, containing general information on real estate agency relationships. Existing law also requires the listing or selling agent to disclose to the buyer and seller whether he or she is acting as the buyer's agent exclusively, the seller's agent exclusively, or as a dual agent representing both the buyer and the seller.*

*This bill would require a person or entity that arranges financing in connection with a sale, lease, or exchange of real property and acts as an agent with respect to that property to make a written disclosure of those roles and his or her compensation, within 24 hours, to all parties to the sale, lease, or exchange and any related loan transaction.*

*By imposing additional requirements under the Real Estate Law, the willful violation of which would be a crime, this bill would impose a state-mandated local program.*

*(2) Under existing law, an equity purchaser is liable for all damages resulting from any statement made, or act committed by, the representative of the equity purchaser, as defined, in any manner connected with the equity purchaser's acquisition of a residence in foreclosure, receipt of any consideration or property from or on behalf of the equity seller, or the performance of certain prohibited acts. Existing law requires the representative of the equity purchaser to provide a statement in writing to all parties to the contract, under penalty of perjury, and written proof of licensure and bonding to the equity seller, as specified.*

*This bill would instead require the representative of an equity purchaser to provide to the parties to a contract written proof of licensure, as specified. The bill would also require the representative to provide a statement under penalty of perjury and written proof to the parties to the contract that he or she has either (1) satisfied a certain minimum professional liability coverage requirement and has an unrestricted real estate license in good standing, as described by the regulations of the Real Estate Commissioner, that is not restricted pursuant to the Real Estate Recovery Program, as specified, or (2) met a certain minimum bonding requirement.*

*Because this bill would expand the scope of the existing crime of perjury, it would impose a state-mandated local program.*

*(3) Existing law requires every mortgage instrument to meet specified requirements. Existing law invalidates any change in interest provided for in any provision for a variable interest rate contained in a security document, as defined, or evidence of debt issued therewith, unless the provision is set forth in the security document or evidence of debt, the document or documents contain, among others, a statement notifying the borrower that the mortgage may provide for changes in interest, principal loan balance, payment, or loan terms, and, upon a change in interest rate, the borrower is mailed specified information on the base index and interest rate change.*

*This bill would require residential mortgage lenders or loan servicers of higher-priced mortgage loans, as defined, with variable interest rates to provide borrowers notice of any rate reset 120 days prior to that reset, as specified.*

(4) Existing law provides that any interest in real property that is capable of being transferred may be mortgaged. Existing law provides that a mortgage of real property may be made in a specified form. Existing law provides for the regulation of mortgages relating to, among other things, single-family, owner-occupied dwellings and recordings and acknowledgments.

This bill would provide that any person who knowingly and willfully defrauds a creditor by acknowledging in the documentation for an owner-occupied residential mortgage loan that the property secured by the loan is to be owner-occupied when that property is actually intended, and used, as rental property, shall be liable for a civil penalty not to exceed 20% of the total amount of the residential mortgage loan, with specified exceptions.

(5) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2008, and before January 1, 2011, in an amount equal to 20% of any contribution made by a qualified taxpayer, as defined, during the taxable year to any nonprofit, HUD-approved credit counseling agency that assists homeowners with mortgage problems. The bill would require the Franchise Tax Board to report annually to the Legislature with regard to those credits, as specified.

(6) The Personal Income Tax Law, in modified conformity with federal income tax laws, authorizes an exclusion from gross income for qualified principal residence indebtedness, as defined, but requires specified discharges of indebtedness to be included in gross income.

This bill would, in modified conformity with federal law, provide for an exclusion from gross income for discharges of indebtedness on a principal residence that occur on or after January 1, 2007.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing state and federal law regulate the terms and conditions of credit cards. Existing state law permits a credit cardholder to request~~

the card issuer to inform the cardholder of the total amount of finance charges assessed on the account during the preceding calendar year and requires the card issuer to provide that information to the cardholder within 30 days without charge, except as specified.

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: ~~no~~<sup>yes</sup>.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 10177.7 is added to the Business and  
2     Professions Code, to read:

3     10177.7. When an agent undertakes to arrange financing in  
4     connection with a sale, lease, or exchange of real property, or  
5     when a person or entity arranging financing in connection with  
6     the sale, lease, or exchange of real property undertakes to act as  
7     an agent with respect to that property, that agent, person, or entity  
8     shall, within 24 hours, make a written disclosure of those roles to  
9     all parties to the sale, lease, or exchange, and any related loan  
10    transaction. That disclosure shall also provide the basis for  
11    compensation and the amount of expected compensation from  
12    these activities. For purposes of this section, "agent" has the same  
13    meaning as defined in subdivision (a) of Section 2079.13 of the  
14    Civil Code.

15    SEC. 2. Section 1695.17 of the Civil Code is amended to read:

16    1695.17. (a) ~~Any~~ A representative, as defined in subdivision  
17    (b) of Section 1695.15, deemed to be the agent or employee, or  
18    both the agent and the employee of the equity purchaser ~~shall be~~  
19    is required to provide ~~both of the following~~:

20    (1) ~~Written~~ written proof to the ~~equity seller~~ parties to the  
21    contract that the representative has a valid current California Real  
22    Estate Sales License and that the representative is bonded by an  
23    admitted surety insurer in an amount equal to twice the fair market  
24    value of the real property which is the subject of the contract.

25    (2) ~~A statement in writing, under penalty of perjury, that the~~  
26    representative has a valid current California Real Estate Sales  
27    License, is bonded by an admitted surety insurer in an amount  
28    equal to at least twice the value of the real property which is the  
29    subject of the contract and has complied with paragraph (1). The

1 ~~written statement required by this paragraph shall be provided to~~  
2 ~~all parties to the contract prior to the transfer of any interest in the~~  
3 ~~real property which is the subject of the contract meets the financial~~  
4 ~~responsibility requirement described in subdivision (c).~~

5 (b) The failure to comply with subdivision (a) shall at the option  
6 of the equity seller render the equity purchase contract void and  
7 the equity purchaser shall be liable to the equity seller for all  
8 damages proximately caused by the failure to comply.

9 (c) *For purposes of this section, a representative shall*  
10 *demonstrate financial responsibility by providing written proof to*  
11 *the parties to the contract and a statement under penalty of perjury*  
12 *that he or she has obtained either of the following:*

13 (1) *Professional liability coverage in an amount equal to one*  
14 *million dollars (\$1,000,000) and an unrestricted real estate license*  
15 *in good standing as described by the regulations of the Real Estate*  
16 *Commissioner pursuant to Chapter 6 (commencing with Section*  
17 *2705) of Title 10 of the California Code of Regulations, that is not*  
18 *restricted under the Real Estate Recovery Program pursuant to*  
19 *Chapter 6.5 (commencing with Section 10470) of Part 1 of Division*  
20 *4 of the Business and Professions Code.*

21 (2) *A surety bond for each contract in an amount equal to at*  
22 *least one-third of the median home price, as published by the*  
23 *California Association of Realtors, for the metropolitan area within*  
24 *which the property is located or, if data for the metropolitan area*  
25 *is not available, for the county in which the property is located.*  
26 *The bond shall be executed by a corporate surety admitted to do*  
27 *business in this state. The bond shall be made in favor of the*  
28 *homeowner or, if the homeowner cannot be found, the State of*  
29 *California for the benefit of a homeowner for damages resulting*  
30 *from any statement made, or act committed by, the representative*  
31 *in any manner connected with the equity purchaser's acquisition*  
32 *of a residence in foreclosure, receipt of any consideration or*  
33 *property from or on behalf of the equity seller, or the performance*  
34 *of any act prohibited by this chapter.*

35 SEC. 3. *Section 1922 is added to the Civil Code, to read:*

36 1922. (a) *Notwithstanding any other provision of law,*  
37 *residential mortgage lenders or loan servicers of higher-priced*  
38 *mortgage loans with variable interest rates shall provide borrowers*  
39 *notice of any rate reset 120 days prior to that reset. The notice*  
40 *shall include, at a minimum, acknowledgment of the loan reset*

1 *and that the borrower may contact the lender or servicer with his*  
2 *or her questions.*

3 *(b) (1) (A) For purposes of this section, “higher-priced*  
4 *mortgage loan” means a consumer credit transaction that is*  
5 *secured by the consumer’s principal dwelling in which the annual*  
6 *percentage rate at consummation exceeds the yield on comparable*  
7 *Treasury securities by three or more percentage points for loans*  
8 *secured by a first lien on a dwelling, or by five or more percentage*  
9 *points for loans secured by a subordinate lien on a dwelling.*

10 *(B) Comparable Treasury securities are determined as follows*  
11 *for variable interest rate loans:*

12 *(i) For a loan with an initial rate that is fixed for more than one*  
13 *year, securities with a maturity matching the duration of the*  
14 *fixed-rate period, unless the fixed-rate period exceeds seven years,*  
15 *in which case the lender or servicer shall use the rules applied to*  
16 *nonvariable interest rate loans.*

17 *(ii) For all other loans, securities with a maturity of one year.*

18 *(C) Comparable Treasury securities are determined as follows*  
19 *for nonvariable interest rate loans:*

20 *(i) For a loan with a term of 20 years or more, securities with*  
21 *a maturity of 10 years.*

22 *(ii) For a loan with a term of more than seven years, but less*  
23 *than 20 years, securities with a maturity of seven years.*

24 *(iii) For a loan with a term of seven years or less, securities*  
25 *with a maturity matching the term of the transaction.*

26 *(D) The lender or servicer shall use the yield on Treasury*  
27 *securities as of the 15th day of the preceding month if the lender*  
28 *or servicer is to provide the notice described in subdivision (a)*  
29 *between the 1st and the 14th day of the month or as of the 15th*  
30 *day of the current month if the lender or servicer is to provide that*  
31 *notice on or after the 15th day.*

32 *(2) For purposes of this section, “higher-priced mortgage loans*  
33 *with variable interest rates” excludes transactions to finance the*  
34 *initial construction of a dwelling, temporary or bridge loans with*  
35 *a term of 12 months or less, such as a loan to purchase a new*  
36 *dwelling where the consumer plans to sell a current dwelling within*  
37 *12 months, reverse-mortgage transactions, or home equity lines*  
38 *of credit.*

39 *SEC. 4. Section 2949.5 is added to the Civil Code, to read:*

1 2949.5. Any person who knowingly and willfully defrauds a  
2 creditor by acknowledging in the documentation for an  
3 owner-occupied residential mortgage loan that the property  
4 secured by the loan is to be owner-occupied when that property  
5 is actually intended, and used, as rental property shall be liable  
6 for a civil penalty not to exceed 20 percent of the total amount of  
7 the residential mortgage loan. This section shall not apply to a  
8 good-faith borrower who vacates his or her residence because of  
9 a significant change in circumstances, including, but not limited to,  
10 job relocation, death in the family, or unemployment. This  
11 section shall be construed to be in conformity with the provisions  
12 of Section 121(a) of the Internal Revenue Code regarding capital  
13 gains tax treatment of a taxpayer's primary residential property.

14 SEC. 5. Section 17053.9 is added to the Revenue and Taxation  
15 Code, to read:

16 17053.9. (a) For each taxable year beginning on or after  
17 January 1, 2008, and before January 1, 2011, there shall be  
18 allowed a credit, as determined in subdivision (b), against the  
19 amount of "net tax," as defined in Section 17039, to a qualified  
20 taxpayer who makes a contribution to any nonprofit,  
21 HUD-approved credit counseling agency that assists homeowners  
22 with mortgage problems.

23 (b) The amount of credit shall constitute 20 percent of the  
24 contribution described in subdivision (a).

25 (c) For purposes of this section, "qualified taxpayer" means a  
26 taxpayer engaged in the practice of real estate with 20 percent or  
27 more of that practice devoted to residential mortgage lending.

28 (d) The Franchise Tax Board shall report annually to the Budget  
29 and Fiscal Review Committee of the Senate, the Budget Committee  
30 of the Assembly, the Senate Committee on Revenue and Taxation,  
31 and the Assembly Committee on Revenue and Taxation on the  
32 aggregate amount claimed under this section.

33 (e) The requirements of subdivision (d) shall not apply if the  
34 Department of Finance separately reports those aggregate numbers  
35 to the Legislature or budget committees.

36 (f) This section shall remain in effect only until December 1,  
37 2011, and as of that date is repealed, unless a later enacted statute,  
38 that is enacted before December 1, 2011, deletes or extends that  
39 date.

1     *SEC. 6. Section 17144 of the Revenue and Taxation Code is*  
2     *amended to read:*

3     17144. (a) Section 108(b)(2)(B) of the Internal Revenue Code,  
4     relating to general business credit, is modified by substituting “this  
5     part” in lieu of “Section 38 (relating to general business credit).”

6     (b) Section 108(b)(2)(G) of the Internal Revenue Code, relating  
7     to foreign tax credit carryovers, shall not apply.

8     (c) Section 108(b)(3)(B) of the Internal Revenue Code, relating  
9     to credit carryover reduction, is modified by substituting “11.1  
10    cents” in lieu of “33 ⅓ cents” in each place in which it appears. In  
11    the case where more than one credit is allowable under this part,  
12    the credits shall be reduced on a pro rata basis.

13    (d) Section 108(g)(3)(B) of the Internal Revenue Code, relating  
14    to adjusted tax attributes, is modified by substituting “(\$9)” in lieu  
15    of “(\$3).”

16    (e) (1) If a taxpayer makes an election for federal income tax  
17    purposes under Section 108(c) of the Internal Revenue Code,  
18    relating to treatment of discharge of qualified real property business  
19    indebtedness, a separate election shall not be allowed under  
20    paragraph (3) of subdivision (e) of Section 17024.5 and the federal  
21    election shall be binding for purposes of this part.

22    (2) If a taxpayer has not made an election for federal income  
23    tax purposes under Section 108(c) of the Internal Revenue Code,  
24    relating to treatment of discharge of qualified real property business  
25    indebtedness, then the taxpayer shall not be allowed to make that  
26    election for purposes of this part.

27    (f) (1) *Paragraph (1) of Section 108(a) of the Internal Revenue*  
28    *Code is modified by striking “or” at the end of subparagraph (C),*  
29    *by striking the period at the end of subparagraph (D) and inserting*  
30    *“, or” and by inserting after subparagraph (D) the following new*  
31    *subparagraph:*

32    (E) *The indebtedness discharged is qualified principal residence*  
33    *indebtedness which is discharged before January 1, 2010.*

34    (2) *For purposes of this section, the term “qualified principal*  
35    *residence indebtedness” means acquisition indebtedness (within*  
36    *the meaning of Section 163 (h)(3)(B) of the Internal Revenue Code,*  
37    *applied by substituting “\$2,000,000 (\$1,000,000” for “\$1,000,000*  
38    *(\$500,000” in clause (ii) thereof) with respect to the principal*  
39    *residence of the taxpayer.*

1 (g) For purposes of this section, all of the following rules shall  
2 apply:

3 (1) The amount excluded from gross income by reason of Section  
4 108(a)(1)(E) of the Internal Revenue Code shall be applied to  
5 reduce (but not below zero) the basis of the principal residence of  
6 the taxpayer.

7 (2) Section 108(a)(1)(E) of the Internal Revenue Code shall not  
8 apply to the discharge of a loan if the discharge is on account of  
9 services performed for the lender or any other factor not directly  
10 related to a decline in the value of the residence or to the financial  
11 condition of the taxpayer.

12 (3) If any loan is discharged, in whole or in part, and only a  
13 portion of that loan is qualified principal residence indebtedness,  
14 Section 108(a)(1)(E) of the Internal Revenue Code shall apply  
15 only to so much of the amount discharged as exceeds the amount  
16 of the loan (as determined immediately before such discharge)  
17 that is not qualified principal residence indebtedness.

18 (4) The term “principal residence” has the same meaning as  
19 when used in Section 121 of the Internal Revenue Code.

20 (h) (1) Section 108(a)(2)(A) of the Internal Revenue Code is  
21 modified by substituting “(D), and (E)” in lieu of “and D.”

22 (2) Section 108(a)(1)(B) of the Internal Revenue Code shall not  
23 apply to a discharge to which Section 108(a)(1)(E) of the Internal  
24 Revenue Code, as modified by this section, applies unless the  
25 taxpayer elects to apply paragraph (1)(B) of Section 108(a) of the  
26 Internal Revenue Code in lieu of paragraph (1)(E) of Section  
27 108(a) of the Internal Revenue Code.

28 (i) The amendments to this section by the act adding this  
29 subdivision shall apply to discharges of indebtedness that occur  
30 on or after January 1, 2007.

31 SEC. 7. Section 23606 is added to the Revenue and Taxation  
32 Code, to read:

33 23606. (a) For each taxable year beginning on or after  
34 January 1, 2008, and before January 1, 2011, there shall be  
35 allowed a credit, as determined in subdivision (b), against the  
36 amount of “tax,” as defined in Section 23036, to a qualified  
37 taxpayer who makes a contribution to any nonprofit,  
38 HUD-approved credit counseling agency that assists homeowners  
39 with mortgage problems.

1 (b) The amount of credit shall constitute 20 percent of the  
2 contribution described in subdivision (a).

3 (c) For purposes of this section, “qualified taxpayer” means a  
4 taxpayer, other than a “C” corporation, as described in  
5 Subchapter C of Chapter 1 of Subtitle A of the Internal Revenue  
6 Code, engaged in the practice of real estate with 20 percent or  
7 more of that practice devoted to residential mortgage lending.

8 (d) The Franchise Tax Board shall report annually to the Budget  
9 and Fiscal Review Committee of the Senate, the Budget Committee  
10 of the Assembly, the Senate Committee on Revenue and Taxation,  
11 and the Assembly Committee on Revenue and Taxation on the  
12 aggregate amount claimed under this section.

13 (e) The requirements of subdivision (d) shall not apply if the  
14 Department of Finance separately reports those aggregate numbers  
15 to the Legislature or budget committees.

16 (f) This section shall remain in effect only until December 1,  
17 2011, and as of that date is repealed, unless a later enacted statute,  
18 that is enacted before December 1, 2011, deletes or extends that  
19 date.

20 SEC. 8. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution because  
22 the only costs that may be incurred by a local agency or school  
23 district will be incurred because this act creates a new crime or  
24 infraction, eliminates a crime or infraction, or changes the penalty  
25 for a crime or infraction, within the meaning of Section 17556 of  
26 the Government Code, or changes the definition of a crime within  
27 the meaning of Section 6 of Article XIII B of the California  
28 Constitution.

29 SEC. 9. This act is an urgency statute necessary for the  
30 immediate preservation of the public peace, health, or safety within  
31 the meaning of Article IV of the Constitution and shall go into  
32 immediate effect. The facts constituting the necessity are:

33 In order to stabilize and protect the state and local economies  
34 and housing market at the earliest possible time, it is necessary  
35 for this act to take effect immediately.

36 SECTION 1. ~~Section 1748.5 of the Civil Code is amended to~~  
37 ~~read:~~

38 ~~1748.5.—(a) A cardholder may request, not more frequently~~  
39 ~~than once a year, that the card issuer inform the cardholder of the~~  
40 ~~total amount of finance charges assessed on the account during~~

1 the preceding calendar year and the card issuer shall provide that  
2 information to the cardholder within 30 days of receiving the  
3 request, without charge.

4 If the cardholder's request for the information is made in writing,  
5 the card issuer shall provide the information in writing. However,  
6 if the card issuer is required to furnish the cardholder with a  
7 periodic billing or periodic statement of account or furnishes the  
8 billing or statement of account, the requested statement of finance  
9 charges may be furnished along with the periodic billing or periodic  
10 statement of account.

11 (b) This section does not apply to card issuers or cardholders  
12 who issue or use credit cards in connection with a retail installment  
13 account, as defined in Section 1802.7.